

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES JIRAK AND ROBERT PEDERSEN,

Plaintiffs,

-vs-

Civil Action No. 07 cv 3626

ABBOTT LABORATORIES, INC.,

Defendant.

Videotaped deposition of BRUCE BROWN,
held before Rebecca L. DiBello, Notary Public,
at The Hyatt Regency, Buffalo, New York, on
Tuesday, September 15th, 2009 at 10:29 AM,
pursuant to notice.

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1 certain managers implemented any sort of
2 changes. For example, as between, and this is
3 just an example, Phelps and Shappi. Did
4 Shappi say you had to visit X number of
5 doctors per day and Phelps said Y; those type
6 of changes.

7 A. Yes. Phelps was much more structured than
8 Donovan was. So it was -- we can pick on
9 individuals, but there were management styles
10 that varied there's no question. Phelps was
11 very much by the Abbott book, so to speak. Go
12 to the field certain hours, go to see a
13 certain number of doctors each day. Very much
14 stifling creativity and autonomy, was very
15 much by a road script, so to speak.

16 Q. So it sounds Phelps was pretty stifling and
17 structured. Is that what you said?

18 A. He was restrictive. He was very concerned
19 that Abbott Laboratories was to be represented
20 the way Abbott Laboratories was to be
21 represented. In other words, you couldn't
22 mention anything outside of a package insert.
23 You're not to mention competitor's products.

1 You're not to do any one of a number of
2 different things that might make a physician
3 pause and perhaps see something in a different
4 light.

5 That was not an Abbott way of thinking.
6 That was very much -- as I have said before,
7 you'd show up with your sales piece, you'd
8 promote application for employment only, for
9 example, and that's it, under a certain number
10 of hours, all of which are monitored by
11 Abbott.

12 It was very much the fellow that would
13 remind about we know when you're in the field,
14 we know when you're not in the field. Based
15 on the computer system they can tell when
16 you're working and when you're not. It was a
17 remarkable change from Donovan. That was just
18 a remarkable change.

19 Q. And Donovan was also an Abbott manager, is
20 that correct?

21 A. Yes. He was my manager at Abbott. Where he
22 came from prior to Abbott, I don't recall.

23 Q. Would you describe him as more flexible?

1 like hospitals or VA's?

2 A. In what context?

3 Q. Sure. Did you have job responsibilities over
4 hospital accounts or VA accounts?

5 A. No, ma'am. No. We were precluded -- not
6 permitted to do anything out of the scope of
7 primary care.

8 Q. Okay. In a very broad sense what decisions
9 did you make on a daily basis at Abbott? Walk
10 me through a day.

11 A. Well, the night before I was probably -- I
12 wasn't probably. I was planning my day,
13 either -- planning the day on paper. There
14 wouldn't be any sort of a software system that
15 would be required for us to use as far as a
16 pre-call planner, so to speak, though pre-call
17 planning was a component of every single call
18 that an Abbott representative would make.

19 I would have to try to figure out the best
20 possible routing based on who it was Abbott
21 required me to go see, what products in the
22 different hierarchy Abbott required me to
23 promote. I would have to see certain

1 physicians on a different call frequency based
2 on what Abbott directives would be.

3 So, taking into account those different
4 variables, you would as a sales rep in
5 addition to that have to make sure not to
6 cross over a counterpart or a particular other
7 Abbott representative, perhaps even from a
8 different division entirely. Not to commingle
9 sales calls in any way or overlap or as the
10 reps in the field would say, get shut out from
11 an office because they would perhaps take one
12 Abbott person a day, so there's a great deal
13 of planning that would go into a given day's
14 activity.

15 Some days were obviously shorter than
16 others. Some days were longer than others.
17 Some days were easier to plan than others, but
18 that's a 30,000 foot view, so to speak.

19 Q. After planning your day the night before what
20 other decisions would you make?

21 A. Regarding?

22 Q. Sure. Walk me through a typical day, the
23 decisions you would make during that day.

1 For example, package insert, sales piece,
2 things that were germane to Abbott's policies
3 or protocols. You can further take a look at
4 post call notes and say geez, doctor was very
5 concerned about possible interactions with our
6 antibiotic and over-the-counter medication, so
7 it's very individual as well as very broad.

8 I wish I could be more specific, but I
9 can't really answer that other than that.

10 Q. So Abbott had directives about what physical
11 information you could review. Does that make
12 sense?

13 A. As well as cerebral. I mean, you had FDA
14 approved documents and leave behind
15 information. You were precluded and as I have
16 said, quoting one of my other bosses, get in
17 trouble if you were to leave something that
18 was not an FDA approved leave behind. You
19 weren't allowed to show something to a doctor
20 that was not an FDA and Abbott approved
21 document. It's just not permitted to do it.

22 Q. Am I understanding it correctly that you
23 weren't permitted to discuss non FDA approved

1 Q. What are is some of the issues or
2 opportunities that were unique to your
3 particular geography?

4 A. Unique?

5 Q. Sure.

6 A. A confiscatory managed care environment where
7 irrespective of the number of calls I made in
8 the territory, irrespective of the number of
9 teammates I had in the territory, irrespective
10 if somebody was even in a given territory had
11 very little impact on the bottom line of
12 results that Abbott laboratory has
13 experienced.

14 For example, I can remember going to
15 meetings and you can see up there on the board
16 on back Bruce Brown number one, which very
17 seldom happened. Two, three, you would have
18 vacant number two and three. There wouldn't
19 be anybody in the territory. Vacant would be
20 there like kicking tail. That's not a
21 function of somebody being able to impact the
22 territory positively. That's a function of
23 the managed care position was.

1 So we can have me agree to line number
2 two, line number three and yes, I answered yes
3 to them, but managed care has a far, far
4 greater impact on these pharmaceutical
5 territories than any individual representative
6 does.

7 Q. The managed care issue in your territory was
8 greater than in other territories?

9 A. Greater, yes, in the context of a monopoly.
10 You go to Kansas City, Missouri for example
11 and I would know this because I was in the
12 pharmaceutical business with Abbott for the
13 better part of a decade or have been for
14 15 years or so. Managed care is different in
15 other places where there is more choice, more
16 freedom of choice, more capitalism taking
17 place.

18 People have a choice. Their rates for
19 health insurance are lower. They have better
20 access to different physicians and they don't
21 have to simply go to their plan and say geez,
22 I'd like the branded product, but I can't
23 afford it so I'll take the generic, which is

1 the environment Western New York is in.

2 Q. And would that impact how you approached your
3 business?

4 A. Yes. It was discouraging. It was something
5 that fostered a lack of initiative environment
6 within the Abbott team I was involved with
7 because no matter how hard you tried, the
8 number of calls you made, no matter what data
9 you knew or what it was you presented, you had
10 next to no impact on that doctor or that
11 hospital or environment or whatever it maybe.
12 You just -- there was only so much you could
13 do.

14 It was just a copay. What tier is it on
15 and I have mentioned that before. Some guys
16 would say no, just save the stuff. I know the
17 drug. What is the tier? What is the copay?
18 What is the copay for IHS? What is the copay
19 for the Blues? Does Univera cover it? Those
20 are the three -- Univera is part, pardon the
21 pun, the beaten stepchild, so it's two managed
22 care organizations in Western New York that
23 run everything. They have a monopoly. So, I

1 hope I answered your question with that, but
2 getting back to what my duties were and how
3 they were impacted by us, by environmental
4 things that was absolutely huge, so I'll say
5 yes I had impact on them, but how you would
6 measure it, how measurable?

7 I've just seen it happen too many times.
8 People wouldn't even be in territories and the
9 territories would take off.

10 Q. So yes, you had impact on sales?

11 A. As measured by Abbott, I'm sure I did, yes.

12 Q. But you believe that you're not sure how much
13 impact?

14 A. I know. I know that for a fact. That's not
15 my opinion. I know that from a fact from my
16 current position, from former positions, from
17 different companies, from different
18 representatives, from different territories.
19 Again, it all goes back to this things, their
20 reporting, who reports, how they report and
21 where your drug falls in a different tier or
22 formulary and I can remember -- well, you see,
23 as things progress with Abbott, field sales

1 representative's ability to be able to perhaps
2 positively impact a territory were not
3 necessarily welcomed in my opinion.

4 Now we're kind of on Bruce's opinion,
5 grant me the indulgence, but when I was with
6 Nowell I had people calling me. Well, who do
7 you know? How can we get it and how can we
8 talk to these people to change the way
9 business is done? To have them look more
10 favorably on our products. That's why we're
11 in business. We're returning the investment
12 to the stockholders.

13 That didn't happen at Abbott. Managed
14 care people who come to town, they wouldn't
15 meet with the reps. Then they would have to
16 go sit across the table from a formulary
17 member or physician who I call on everyday,
18 who knows me who they don't have a
19 relationship with or any kind of way to
20 evaluate his or her ability to adopt a product
21 or have an opinion on a product, so there is
22 probably some sort of jaggedness or angst
23 there, but that's the way Abbott worked and

1 nobody asked for my opinion and you just did
2 what you're told, so I'd go out and make my
3 sales calls.

4 Q. There was the managed care problem. Were
5 there any other problems that were unique to
6 you territory?

7 A. You call it a problem. That's just the fact
8 the way it was. That's just the way it was.

9 Q. If we call it an issue can we agree on that?

10 A. I'll agree it's a problem. It's a problem.
11 It's a problem.

12 Q. Are there any other issues you can think of?

13 A. I like to paint myself as a problem solver. I
14 apologize. Again, you're asking for my
15 opinion. The simple number or voluminous
16 nature of so many sales reps bombarding
17 doctors really got to be a big, big problem in
18 the eyes of the physicians and as a senior guy
19 I don't have much hair. I have some grey
20 hair. I would hear about it because I kind of
21 grew up with some of the doctors. They would
22 be like look, can you call her off and tell
23 her not to come here any more, and I am not